

NEW JERSEY BOARD OF PUBLIC UTILITIES

Courtesy Copy of N.J.A.C. 14:4-8

RENEWABLE ENERGY PORTFOLIO STANDARDS

Effective March 7, 2005

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14:4-8.1 Purpose and scope

(a) Each supplier/provider, as defined at N.J.A.C. 14:4-8.2, that sells electricity to retail customers in New Jersey, shall include in its electric energy portfolio electricity generated from renewable energy sources. This subchapter is designed to encourage the development of renewable sources of electricity and new, cleaner generation technology; minimize the environmental impact of air pollutant emissions from electric generation; reduce possible transport of emissions and minimize any adverse environmental impact from deregulation of energy generation.

(b) This subchapter governs the retail electricity sales of each supplier/provider, as defined in N.J.A.C. 14:4-8.2. This subchapter does not govern installed capacity obligations, as defined at N.J.A.C. 14:4-8.2.

(c) This subchapter does not apply to a private or government aggregator that contracts for electric generation service or electric related services, either separately or bundled, for its own facilities or on behalf of other business and residential customers in this State. This subchapter does not apply to an energy agent, as defined at N.J.A.C. 14:4-8.2. A supplier/provider that is contractually obligated to sell electricity to an aggregator shall comply with this subchapter by including the amount sold to the aggregator as part of its energy portfolio.

14:4-8.2 Definitions

The following words and terms, when used in this subchapter, shall have the meanings given below, unless the context clearly indicates otherwise:

"Aggregator" means either of the following:

1. A government aggregator, as that term is defined in the Board's rules on government energy aggregation programs at N.J.A.C. 14:4-6; or
2. A private non-government entity that is a duly organized business or non-profit organization authorized to do business in New Jersey and that enters into a contract with a duly licensed electric power supplier for the purchase of electric energy and capacity, on behalf of multiple end-use customers by combining the loads of those customers.

A government or private aggregator, as well as its customers, shall be considered to be retail customers, as defined in this section.

"Alternative compliance payment" or "ACP" means a payment of a certain dollar amount per megawatt hour, which a supplier/provider may submit in lieu of supplying the class I or class II renewable energy required under Table A in N.J.A.C. 14:4-8.3.

"Attribute" means a characteristic associated with electricity, such as its generation date, facility geographic location, unit vintage, emissions output, fuel, State program eligibility, or other characteristic that can be identified, accounted, and tracked.

"Basic generation service" means electric generation service that is provided to any customer that has not chosen an electric power supplier, as defined herein, whether or not the customer has received offers for competitive supply options; including, but not limited to, any customer that cannot obtain such service from an electric power supplier for any reason, including non-payment for services. Basic generation service is not a competitive service and shall be fully regulated by the Board. An electric distribution company, as defined herein, may provide basic generation service.

"Bioenergy crop" means plants cultivated and harvested specifically for use as fuel for the purpose of generating electricity.

"Biomass" has the same meaning as that assigned to this term in Executive Order 13134, published in the Federal Register on August 16, 1999. Executive Order 13134 defines biomass as ". . . any organic matter that is available on a renewable or recurring basis (excluding old-growth timber), including dedicated energy crops and trees, agricultural food and feed crop residues, aquatic plants, wood and wood residues, animal wastes, and other waste materials."

"Black liquor" means a viscous liquid containing inorganic chemicals and organic material such as lignin and aliphatic acids, which is separated from wood during chemical pulping.

"Board" means the New Jersey Board of Public Utilities or any successor agency.

"Broker" means a duly licensed electric power supplier that assumes the contractual and legal responsibility for the sale of electric generation service, transmission or other services to end-use retail customers, but does not take title to any of the power sold.

"Class I renewable energy" means electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells powered by renewable fuels, geothermal technologies, wave or tidal action, and/or methane gas from landfills or a biomass facility, provided that the biomass is cultivated and harvested in a sustainable manner. Types of class I renewable energy that qualify for use in meeting the requirements of this subchapter are set forth at N.J.A.C. 14:4-8.5.

"Class II renewable energy" means electric energy produced at a resource recovery facility or hydro power facility, provided that such facility is located where retail competition is permitted and provided further that the Commissioner of Environmental Protection has determined that such facility meets the highest environmental standards and minimizes any impacts to the environment and local communities. Types of class II renewable energy that qualify for use in meeting the requirements of this subchapter are set forth at N.J.A.C. 14:4-8.6.

"Electric power supplier" means a person or entity that is duly licensed by the Board to offer and to assume the contractual and legal responsibility to provide electric generation service to retail customers. This term includes load serving entities, marketers and brokers that offer or provide electric generation service to retail customers. An electric power supplier may provide basic generation service, as defined herein. However, the term excludes an electric public utility that provides electric generation service only for the purpose of providing basic generation service, as defined herein.

"Energy" means electric energy measured in kilowatt hours (kWh).

"Energy agent" means a person that is duly registered by the Board to arrange the sale of retail electricity or electric related services between government aggregators or private aggregators and electric power suppliers, but does not take title to the electric sold.

"Energy portfolio" means all of the electrical energy supplied by a particular electric power supplier or basic generation service provider to New Jersey retail customers.

"Fuel cell" means an electrochemical device that converts chemical energy in a hydrogen or hydrogen-rich fuel directly into electricity, without combustion.

"GATS system" means the Generation Attribute Tracking System that, as of April 19, 2004 is under development by PJM Interconnection.

"Geothermal energy" means energy generated by a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth's crust.

"Installed capacity obligation" means the requirement for an electric power supplier or basic generation service provider to obtain an amount of electrical generation capacity to meet load service obligations under the reliability rules of PJM Interconnection.

Installed capacity includes the generation capacity which a company considers part of its own electric system, including wholly-owned units, jointly-owned units, non-utility generation (NUGs), and purchases.

"Marketer" means a duly licensed electric power supplier that takes title to electric energy and capacity, transmission and other services from electric power generators and other wholesale suppliers and then assumes contractual and legal obligation to provide electric generation service, and may include transmission and other services, to an end-use retail customer or customers.

"Net metering" means the difference between the electricity generated on the customer's side of the meter using wind or solar photovoltaic systems and the amount of electricity supplied by the electric power supplier or basic generation service provider over an annualized period as determined by a meter which is allowed to run backwards.

"NJDEP" means the New Jersey Department of Environmental Protection.

"Old-growth timber" means wood or plant matter taken from a forest in the late successional stage of forest development, including plant matter taken from the forest floor. Late successional forests contain live and dead trees of various sizes, species, composition, and age class structure. The age and structure of old-growth timber varies significantly by forest type and from one biogeoclimatic zone to another.

"PJM Interconnection" means the regional transmission organization (RTO) that coordinates the movement of wholesale electricity in the PJM region, as defined in this section.

"PJM region" means the area within which the movement of wholesale electricity is coordinated by PJM Interconnection, as defined in this section. ("PJM" stands for Pennsylvania-Jersey-Maryland.) The PJM region is described in the Amended and Restated Operating Agreement of PJM Interconnection, which is incorporated herein by reference, as amended and supplemented. The Operating Agreement can be obtained on the PJM Interconnection website at www.pjm.com, or by writing to PJM Interconnection, Legal Department, 955 Jefferson Avenue, Norristown, PA, 19403. As of April 5, 2004, the PJM region includes all or parts of Delaware, Maryland, New Jersey, Ohio, Pennsylvania, Virginia, West Virginia, and the District of Columbia.

"Qualified renewable energy" means electricity that may be used in complying with the minimum portfolio requirements set forth at N.J.A.C. 14:4-8.3 for class I renewable energy, including solar electric generation requirements, and/or class II renewable energy. Provisions governing the types of energy that qualify as class I renewable energy, solar electric generation, and class II renewable energy, are set forth at N.J.A.C. 14:4-8.4, 8.5, and 8.6 respectively.

"Renewable Energy Certificate" or "REC" means a certificate representing the environmental benefits or attributes of one megawatt-hour of generation from a

generating facility that meets the requirements of this subchapter. There are three kinds of RECs – class I RECs, which represent the environmental benefits or attributes of one megawatt-hour of class I renewable energy generation; class II RECs, which represent the environmental benefits or attributes of one megawatt-hour of class II renewable energy generation; and solar RECs, which represent the environmental benefits or attributes of one megawatt-hour of solar electric generation.

"Renewable fuel" means a fuel that is naturally regenerated over a short time scale and is either derived from the sun (such as thermal, photochemical or photoelectric), or from other natural sources such as wind, hydropower, geothermal and tidal energy, or photosynthetic energy stored in biomass. This term does not include a fossil fuel, a waste product from a fossil source, or a waste product from an inorganic source.

"Reporting year" means the twelve-month period from June 1st through May 31st. A reporting year shall be numbered according to the calendar year in which it ends, so that reporting year 2005 runs from June 1, 2004 through May 31, 2005.

"Retail choice" or "retail competition" means the ability of retail customers to purchase electric generation service from electric power suppliers, or to choose basic generation service, as defined in this section. This term also includes the ability of any electric power supplier, upon meeting basic licensing requirements, to offer electric generation service to retail customers.

"Retail customer" means any person that is an end user of electricity and is connected to any part of the transmission and distribution system within an electric public utility's service territory in New Jersey. This term includes an aggregator, as well as the customer of a private sector aggregator or government aggregator, but does not include a wholesale customer.

"Societal benefits charge" means a charge imposed by an electric public utility, at a level determined by the Board, in accordance with N.J.S.A. 48:3-60.

"Solar alternative compliance payment" or "SACP" means a payment of a certain dollar amount per megawatt hour, which a supplier/provider may submit in lieu of complying with the solar electric generation requirements in Table A in N.J.A.C. 14:4-8.3.

"Solar electric generation" means creation of electricity using a system that employs solar radiation to produce energy that powers an electric generator. Solar electric generation includes technologies that utilize the photovoltaic effect. Solar electric generation is a type of class I renewable energy.

"Solar REC" means a type of REC, as defined herein, issued by the Board or its designee, which represents the environmental benefits or attributes of one megawatt-hour of solar electric generation, as defined in this section.

"Supplier/provider" means an electric power supplier or a basic generation service provider, as those terms are defined in this section.

"True-up period" means the period each year from the end of the reporting year until September 1.

14:4-8.3 Minimum percentage of renewable energy required

(a) Each supplier/provider, as defined at N.J.A.C. 14:4-8.2, that sells electricity to retail customers in New Jersey, shall ensure that the electricity it sells each reporting year in New Jersey includes at least the minimum percentage of qualified renewable energy, as defined at N.J.A.C. 14:4-8.2, required for that reporting year from each category specified in Table A below, except as provided at (j) below:

Table A
What Percentage Of Energy Supplied Must Be Renewable Energy?

Reporting Year	Solar Electric Generation (solar RECs)	Class I Renewable Energy	Class II Renewable Energy	Total Renewable Energy
June 1, 2004 – May 31, 2005	0.01%	.74%	2.5%	3.25%
June 1, 2005 – May 31, 2006	0.017%	0.983%	2.5%	3.5%
June 1, 2006 – May 31, 2007	0.0393%	2.037%	2.5%	4.5763%
June 1, 2007 – May 31, 2008	0.0817%	2.924%	2.5%	5.5057%
June 1, 2008 – May 31, 2009	0.16%	3.84%	2.5%	6.5%

(b) The Board shall adopt rules setting the minimum percentages of solar electric generation, class I renewable energy, and class II renewable energy required for reporting year 2009 and each subsequent reporting year. These minimum percentages shall be no lower than those required for reporting year 2008 in Table A above. Each of the rules setting such minimum percentage shall be adopted at least two years prior to the minimum percentage being required.

(c) A supplier/provider shall meet the requirements for solar electric generation in Table A above through submittal of solar RECs, or through submittal of one or more SACP, as those terms are defined at N.J.A.C. 14:4-8.2.

(d) A supplier/provider may choose to meet the class I and class II renewable energy requirements in Table A above through supplying renewable energy or through the use of RECs in accordance with N.J.A.C. 14:4-8.8. However, class I and II renewable energy RECs shall be used only after the Board has authorized such use by Board order.

(e) If a supplier/provider complies with this subchapter by directly supplying solar electric generation, class I renewable energy, and/or class II renewable energy to customers, the energy shall be supplied to customers during the reporting year.

(f) A supplier/provider may, in lieu of meeting the requirements in Table A above, comply with this subchapter by submitting the appropriate number of ACPs or SACP, in accordance with N.J.A.C. 14:4-8.10.

(g) The following shall apply to the type of energy used for compliance with each of the requirements in Table A above:

1. Solar RECs may be used to meet any requirement in Table A, whether the requirement is for solar electric generation, class I renewable energy, or class II renewable energy;
2. Direct supply of solar electric generation may be used to meet class I or class II renewable energy requirements, but shall not be used to meet solar electric generation requirements;
3. Class I renewable energy may be used to meet class I renewable energy requirements or class II renewable energy requirements, but shall not be used to meet solar electric generation requirements; and
4. Class II renewable energy shall be used only to meet class II renewable energy requirements, and shall not be used to meet solar electric generation requirements or class I renewable energy requirements.

(h) The percentage requirements in (a) through (g) above take effect on June 1, 2004. For the five month period starting January 1, 2004 and ending at the start of reporting year 2005 (June 1, 2004), the percentage requirements shall be as follows:

Time period	Class I	Class I or II	Total
January 1, 2004 through May 31, 2004	0.75%	2.5%	3.25%

(i) Upon the Board's adoption of a tracking system for class I and II renewable energy, a supplier/provider shall no longer be authorized to demonstrate compliance with this subchapter using direct supply of any type of renewable energy. All RPS compliance shall thereafter be submitted in the form of RECs.

(j) If a supplier/provider participated in the Board's 2003 basic generation service (BGS) auction, and won the right to supply one or more 34-month tranches in that auction, the supplier/provider shall be subject to this subsection. For the portion of the supplier/provider's energy portfolio that is supplied pursuant to a 2003 BGS 34-month tranche, the provisions of this subchapter that were in effect on the date of the 2003 BGS auction shall apply, and the supplier/provider's RPS obligation shall not be determined under (a) above but instead shall be determined under Table B below. For all other energy in the supplier/provider's energy portfolio, which is not supplied pursuant to a 2003 BGS tranche the supplier/provider shall meet the percentage requirements of (a) above and all other requirements of this subchapter.

Table B
What Percentage Of Energy Supplied Pursuant To 2003 BGS Tranches Must Be Renewable Energy?

Time Period	Class I	Class I or II	Total
Through May 31, 2004	0.75%	2.5%	3.25%
June 1, 2004 through May 31, 2005	0.75%	2.5%	3.25%
June 1, 2005 through May 31, 2006	1.0%	2.5%	3.5%
After May 31, 2006	See N.J.A.C. 14:4-8.3(a), Table A	See N.J.A.C. 14:4-8.3(a), Table A	See N.J.A.C. 14:4-8.3(a), Table A

14:4-8.4 Compliance with solar electric generation requirements

(a) The requirements in Table A N.J.A.C. 14:4-8.3 for solar electric generation shall be met through the submittal of solar RECs, as defined at N.J.A.C. 14:4-8.2; or submittal of SACP's in accordance with N.J.A.C. 14:4-8.10. Direct supply of solar electric generation may be used to meet class I or class II renewable energy requirements, but shall not be used to meet the solar electric generation requirements in Table A.

(b) A supplier/provider shall not use a solar REC that has been used to satisfy another state's renewable energy requirements for compliance with the requirements at N.J.A.C. 14:4-8.3 for solar electric generation.

(c) The same renewable energy shall not be used for more than one of the following:

1. Creation of a REC under N.J.A.C. 14:4-8.9;
2. Direct supply to customers for compliance with any of the requirements in this subchapter;
3. Direct supply to customers for compliance with another state's renewable energy standards; or
4. Creation of a REC or other type of attribute or credit, for use in complying with another state's renewable energy requirements.

14:4-8.5 Compliance with class I renewable energy requirements

(a) This section sets forth the types of energy that qualify as class I renewable energy for the purposes of this subchapter. The Board has determined that energy listed at (b) below qualifies as class I renewable energy, with no prior approval required. Energy listed at (d) and (e) below shall qualify as class I renewable energy if the conditions specified in those subsections are met.

(b) The following qualify as class I renewable energy for the purposes of this subchapter, with no prior approval required:

1. Solar electric generation, either in the form of solar RECs or as direct supply to customers;
2. Electricity derived from wind energy;
3. Electricity derived from wave or tidal action;
4. Electricity that is geothermal energy, as defined in N.J.A.C. 14:4-8.2;
5. Electricity generated by the combustion of methane gas captured from a landfill;
6. Electricity generated by a fuel cell powered by methanol, ethanol, landfill gas, digester gas, biomass gas, or other renewable fuel. Electricity generated by a fuel cell powered by a fossil fuel shall not qualify as class I renewable energy for the purposes of this subchapter;
7. Electricity generated by the combustion of gas from the anaerobic digestion of food waste and sewage sludge at a biomass generating facility;
8. Electricity generated through a class I renewable energy project funded by the societal benefits charge, as defined at N.J.A.C. 14:4-8.2; and
9. Electricity generated through a project funded through the Board's Clean Energy Program.

(c) For purposes of this section, the term "combustion of biomass" includes both the burning of captured methane gas derived from biomass, as well as the direct firing of biomass.

(d) Electricity produced through combustion of the following types of biomass shall qualify as class I renewable energy, provided that the NJDEP provides Board staff with a biomass sustainability determination for the biomass in accordance with (f) and (g) below:

1. A bioenergy crop, as defined at N.J.A.C. 14:4-8.2, including wood produced at a biomass energy plantation;

2. Wood from the thinning or trimming of trees and/or from a forest floor, provided that the wood is not old-growth timber, as defined at N.J.A.C. 14:4-8.2; and that the wood is unadulterated by non-cellulose substances or material;
3. Gas generated by anaerobic digestion of biomass fuels other than food waste and sewage sludge, including bioenergy crops and agricultural waste; and
4. Either of the following types of wood, provided that the wood is unadulterated by non-cellulose substances or material:
 - (a) Ground or shredded pallets or other scrap wood, with all nails and other metal removed, produced at a facility that is classified as a Class B recycling facility by the New Jersey Department of Environmental Protection's Bureau of Landfill and Recycling Management, or at an equivalent recycling facility approved by the state environmental agency in which the facility is located; or
 - (b) Wood shavings and/or scrap from a lumberyard or a paper mill, excluding black liquor, as defined at N.J.A.C. 14:4-8.2.

(e) Electricity produced through combustion of a type of biomass not described in this section may qualify as class I renewable energy for the purposes of this subchapter, provided that the NJDEP provides Board staff with a biomass sustainability determination for the biomass in accordance with (f) and (g) below.

(f) To support a biomass sustainability determination, a supplier/provider or biomass facility operator shall demonstrate all of the following:

1. The generation facility meets NJDEP requirements for state of the art (SOTA) air pollution control at N.J.A.C. 7:27-8;
2. The generation facility's ash management practices comply with NJDEP requirements; and
3. All plant matter used directly as biomass fuel was cultivated and harvested in a sustainable manner, in accordance with a management plan approved by the state environmental agency or agricultural agency in the state in which the plant was grown. If the plant matter is not used directly as biomass fuel, but is subject to alteration after its harvest and before its use as biomass fuel, this determination is not required.

(g) To obtain a biomass sustainability determination, a supplier/provider or biomass facility operator shall submit a request for the determination, including any documentation required by NJDEP. The request shall be submitted to the NJBPU Office of Clean Energy, P.O. Box 350, Trenton, New Jersey 08625. The supplier/provider or biomass facility operator shall simultaneously provide a copy of the request to the NJDEP's Office of Innovative Technology, P.O. Box 409, Trenton, New Jersey 08625.

(h) If a biomass sustainability determination is required for class I renewable energy used to comply with this subchapter, the supplier/provider shall submit the determination as part of the annual report required under N.J.A.C. 14:4-8.11, or the biomass facility operator shall submit the determination by September 1 of each year. If the determination is not submitted annually, the energy shall not qualify for use to

comply with this subchapter, and the supplier/provider shall submit RECs or ACPs to make up the shortfall. A determination submitted to board staff after the due date of the annual report shall not be accepted, and the electricity shall not be counted towards the supplier/provider's compliance with this subchapter.

(i) A supplier/provider that uses electricity generated through use of biomass to comply with this subchapter shall maintain documentation that the biomass meets the requirements of this section. If the supplier/provider or biomass facility operator obtained a NJDEP biomass sustainability determination, the supplier/provider or biomass facility operator shall maintain the request for the determination and all supporting documentation on file for five years, and shall produce that documentation upon request by the Board or its designee. In addition, the supplier/provider or biomass facility operator shall annually provide to the Board an affidavit from the operator of the generating facility, certifying that the generating facility continues to operate in conformity with the request and documentation originally provided.

(j) If a generating facility that uses biomass is covered by a NJDEP biomass sustainability determination, and there is a change in the operation of the facility or in the composition of the biomass used as fuel, including in its cultivation and harvesting, any supplier/provider that intends to rely on the facility in the following year for RPS compliance shall do one of the following:

1. Submit a new application for a biomass sustainability determination to the Board. The new application shall be submitted as part of the annual report required under N.J.A.C. 14:4-8.11; or
2. Ensure that the biomass facility operator submits a new determination within 30 days after the change is made, and no later than the date upon which the annual report is due under N.J.A.C. 14:4-8.11.

(k) Failure to submit the information required under (j) above shall disqualify the electricity produced by the facility from use as class I renewable energy as of the date the change in the operation or fuel was made.

(l) Electricity produced through combustion of the following substances shall not qualify as class I renewable energy for the purposes of this subchapter:

1. Treated, painted or chemically coated wood;
2. Municipal solid waste;
3. Tires;
4. Sewage sludge;
5. Wood waste, including demolition waste and construction waste;
6. Old-growth timber, as defined at N.J.A.C. 14:4-8.2; and
7. Wood harvested from a standing forest, except for a forest that is part of a bioenergy plantation.

14:4-8.6 Compliance with class II renewable energy requirements

(a) This section sets forth the types of energy that qualify as class II renewable energy for the purposes of this subchapter. The Board has determined that energy listed at (b) below qualifies as class II renewable energy, with no prior approval required. Energy described at (c) below shall qualify as class II renewable energy if the conditions specified in (c) are met.

(b) The following qualify as class II renewable energy for the purposes of this subchapter:

1. Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from all generating units combined; and
2. Electricity generated by a resource recovery facility located in New Jersey, covered by all required NJDEP approvals, and operating in compliance with all applicable New Jersey environmental laws.

(c) Electricity generated by a resource recovery facility located outside of New Jersey shall qualify as class II renewable energy if both of the following criteria are met:

1. The facility is located in a state with retail competition, as defined at N.J.A.C. 14:4-8.2; and
2. NJDEP makes an environmental compliance determination, stating that the facility meets or exceeds all NJDEP requirements that would apply to the facility if it were located in New Jersey, or meets equivalent environmental requirements.

(d) To obtain a NJDEP environmental compliance determination for a resource recovery facility, a supplier/provider or facility operator shall submit a request for the determination, including the documentation listed at (e) below, to the NJBPU Office of Clean Energy, P.O. Box 350, Trenton, New Jersey 08625. The supplier/provider or facility operator shall simultaneously provide a copy of the request to the NJDEP's Office of Innovative Technology, P.O. Box 409, Trenton, New Jersey 08625.

(e) A request for an environmental compliance determination regarding a resource recovery facility shall include all information required by NJDEP, including, but not limited to, the following:

1. The most recent stack test data reports, or summary reports, for all criteria pollutants emitted by the facility, including any stack test data for mercury emissions from the facility. If stack test data are available on a quarterly basis, the most recent four quarters shall be submitted. These data, if available, should provide, at a minimum, the mercury inlet and outlet concentration for each unit, in addition to the percent removal;
2. A description of the municipal solid waste (MSW) recycling program in the jurisdictions that provide solid waste to the facility, including any solid waste from an industry source. This description shall state the entities that administer the recycling program(s), the percentage of MSW provided through local government contracts and/or agreements, the company providing any industry source MSW, and the amount of solid waste purchased on the spot market, if any; and

3. Residual ash testing data from the most recent 12 month period, including data reports or summary reports for total metals, Toxicity Characteristic Leaching Procedure (TCLP), or other leveling tests performed, and the total amount of tetrachlorodibenzo-p-dioxins (TCDD) in the ash.

(f) If an environmental compliance determination is required for electricity to qualify as class II renewable energy, the determination shall be obtained prior to generating the electricity. If a supplier/provider delivers electricity generated at a facility that requires an NJDEP environmental compliance determination, but did not obtain such a determination prior to the generation of that electricity, the electricity shall not be counted towards the supplier/provider's compliance with this subchapter.

(g) A supplier/provider that uses electricity generated from a resource recovery facility to comply with this subchapter shall:

1. Maintain documentation showing that the facility meets the requirements of this section; and
2. If the supplier/provider or facility operator obtained a NJDEP environmental compliance determination, the supplier/provider or facility operator shall:
 - i. Maintain the request submitted to NJDEP for the environmental compliance determination and all supporting documentation on file for five years;
 - ii. Produce the request and documentation upon request by the Board or its designee; and
 - iii. Annually provide to the Board an affidavit from the operator of the resource recovery facility, certifying that the facility has not violated its federal or state environmental permits in the previous year, and continues to operate in conformity with the request and documentation originally provided to NJDEP.

(h) If there is a change in the operation of a resource recovery facility or in the composition of its fuel, the supplier/provider or facility operator shall submit the following information to the Board within 30 days after the change is made. Failure to submit the following shall disqualify the electricity produced by the facility from use as class II renewable energy as of the date of the change:

1. Documentation demonstrating that, after the change, the resource recovery facility continues to meet the requirements of this section for class II renewable energy; and
2. In the case of a facility covered by a NJDEP environmental compliance determination, a new determination shall be obtained from NJDEP and filed with the Board.

(i) In addition to the other types of energy that qualify as class II renewable energy under this section, any energy that qualifies as class I renewable energy under N.J.A.C. 14:4-8.4 may be used to satisfy the requirements for class II renewable energy.

14:4-8.7 Requirements that apply to both class I and class II renewable energy

- (a) To qualify as class I or class II renewable energy for the purposes of this subchapter, energy shall meet the requirements in N.J.A.C. 14:4-8.5 and 8.6, and in addition shall meet the requirements of this section.
- (b) To qualify as class I or class II renewable energy for the purposes of this subchapter, energy shall be generated within or delivered into the PJM region, as defined in N.J.A.C. 14:4-8.2. Energy shall be considered delivered into the PJM region if it complies with the energy delivery rules established by PJM Interconnection.
- (c) If class I or class II renewable energy is generated outside of the PJM region, but was delivered into the PJM region, the energy may be used to meet the requirements of this subchapter only if the energy was generated at a facility that commenced construction on or after January 1, 2003.
- (d) A supplier/provider shall not use energy used to satisfy another state's renewable energy portfolio requirements for compliance with the class I or class II renewable energy requirements at N.J.A.C. 14:4-8.3.

14:4-8.8 Renewable Energy Certificates (RECs)

- (a) A supplier/provider may choose to submit one or more Renewable Energy Certificates, or RECs, as defined in N.J.A.C. 14:4-8.2, in lieu of supplying the percentage of renewable energy required under Table A in N.J.A.C. 14:4-8.3. A supplier/provider that wishes to use RECs to comply with this subchapter shall meet the requirements of this section.
- (b) If a supplier/provider complies with this subchapter by submitting RECs, the RECs shall be based on energy that was generated during the reporting year for which the REC is submitted, in accordance with N.J.A.C. 14:4-8.9, except for a REC issued prior to June 1, 2004. A REC issued prior to June 1, 2004 may be used for compliance with the requirements for the reporting year ending June 1, 2005.
- (c) Until issuance of a Board order that specifies otherwise, the only RECs that may be used to comply with this subchapter are solar RECs issued by the Board or its designee in accordance with N.J.A.C. 14:4-8.9. The Board may issue an order approving use of class I and class II RECs issued by PJM Interconnection or another entity for compliance with this subchapter.
- (d) Once a REC has been submitted for compliance with this subchapter, the REC shall be permanently retired and shall not be used again.

14:4-8.9 Board issuance of solar RECs

(a) The Board or its designee shall issue solar RECs for use in complying with this subchapter, in accordance with this section. The Board may, after public notice, issue an order discontinuing Board issuance of solar RECs and/or approving use of solar RECs issued by PJM Interconnection or another entity for compliance with this subchapter.

(b) The Board or its designee shall issue solar RECs only for solar electric generation that takes place after March 1, 2004.

(c) In measuring generation in order to determine the number of solar RECs to issue, the Board or its designee shall accept either of the following measurement methods, as applicable:

1. Periodic readings of a meter that records megawatt-hour production of electrical energy. The readings may be taken or submitted by any person, but shall be verified by the Board or its designee; or
2. For a solar generating system with a capacity of less than 10 kilowatts, annual engineering estimates and/or monitoring protocols approved by the Board. The Board shall post acceptable estimation methodologies and monitoring protocols on its website at www.bpu.state.nj.us, by July 18, 2004.

(d) The Board or its designee shall issue solar RECs in whole units, each representing the environmental attributes of one megawatt-hour of solar electric generation.

(e) To qualify for issuance of a solar REC, solar electric generation shall be produced by a generating facility that is interconnected with an electric distribution system, as defined at N.J.A.C. 14:4-9.2, that supplies New Jersey. The Board may waive this requirement by Board order if the Board adopts a joint or regional REC tracking system, and determines that such waiver would facilitate participation in the system.

(f) To use solar electric generation to comply with the solar electric generation requirements at N.J.A.C. 14:4-8.3, a REC must be issued for the solar electric generation.

(g) If a REC is to be used for RPS compliance for a reporting year, the REC shall be based on energy generated in that same reporting year, except pursuant to N.J.A.C. 14:4-8.8(b), and except for fractions carried over in accordance with (i) below.

(h) If a REC is to be used for RPS compliance for a reporting year, the application for the REC shall be submitted within the reporting year, or within the true-up period immediately following the reporting year.

(i) If a generator has accumulated a fraction of a megawatt hour by the end of a reporting year, the fraction may be carried over and combined with energy generated in one or more subsequent reporting years in order to make a full megawatt hour that is eligible for a REC. In such a case, the combined energy shall be eligible for issuance

of a REC only during the reporting year in which accumulated generation reaches one full megawatt hour. Only a fraction of a megawatt hour shall be carried over. In accordance with (f) above, a full megawatt hour shall not be carried over. If a full megawatt hour is generated by the end of a reporting year and an application for a REC is not submitted by the end of the true-up period immediately following the reporting year, the megawatt hour shall not be eligible for a REC and shall not be usable for RPS compliance.

(j) Because each true-up period is also the first three months of a new reporting year, a REC based on solar energy generated during this three month period shall be used only for RPS compliance for the new reporting year.

(k) A request for issuance of a solar REC shall be submitted to the Board on a form posted on the Board's website at www.bpu.state.nj.us. The Board shall require submittal of information and certifications needed to enable the Board or its designee to verify the generation that forms the basis of the requested RECs. The Board shall require inspections of generation equipment, monitoring and metering equipment, and other facilities relevant to verifying solar electric generation. The Board shall impose application fees, inspection fees, and/or other charges for work required to verify solar electric generation and issue RECs.

(l) Each REC shall include the following:

1. The date upon which or period during which the electricity was generated;
2. The date upon which the REC was issued;
3. A unique tracking number, assigned by the issuer of the REC; and
4. An expiration date. The expiration date of a REC shall be the last day of the true-up period following the reporting year in which the energy that formed the basis for the REC was generated.

(m) The Board or its designee shall not issue a solar REC based on solar electric generation that has previously been used for compliance with this subchapter, or that has been used to satisfy another state's renewable energy requirements.

14:4-8.10 Alternative compliance payments (ACPs and SACPs)

(a) A supplier/provider may choose to submit one or more alternative compliance payments (ACPs) or solar alternative compliance payments (SACPs), as those terms are defined in N.J.A.C. 14:4-8.2, in lieu of supplying the percentage of renewable energy required under Table A in N.J.A.C. 14:4-8.3. A supplier/provider that wishes to use ACPs or SACPs to comply with this subchapter shall meet the requirements of this section.

(b) The President of the Board shall appoint an ACP advisory committee to provide recommendations to the Board regarding the appropriate cost of ACPs, as well as other characteristics of their use. The Board shall consider the advisory committee's recommendation and shall, through Board order, set prices for ACPs and SACPs. At a

minimum, the price of an ACP or an SACP shall be higher than the estimated competitive market cost of the following:

1. The cost of meeting the requirement through purchase of a REC or solar REC; or
2. The cost of meeting the requirement through generating the required renewable energy.

(c) The Board shall review the amount of ACPs and SACPs at least once per year, in consultation with the ACP advisory committee, and shall adjust these amounts as needed to comply with (b)1 and 2 above and to reflect changing conditions in the environment, the energy industry, and markets.

(d) To comply with this subchapter using ACPs or SACPs, a supplier/provider shall submit the following to the Board, as applicable:

1. One ACP for each megawatt-hour of class I or class II renewable energy required; or
2. One SACP for each megawatt-hour of solar electric generation required.

(e) The Board shall use the ACP monies submitted to meet the requirements of this subchapter to fund renewable energy projects through the Clean Energy Program. The Board shall use SACP monies to fund solar energy projects through the New Jersey Clean Energy Program.

14:4-8.11 Demonstrating compliance, reporting and record keeping

(a) By September 1st of each year, each supplier/provider shall file an annual report with the Board, demonstrating that the supplier/provider has met the requirements of this subchapter for the preceding reporting year (that is, for the reporting year ending May 31st of the same calendar year). Except pursuant to (i) below, the first report due under this section shall be submitted by September 1, 2005, and shall cover reporting year 2004.

(b) If the annual report required under (a) above does not demonstrate that the supplier/provider has supplied the energy required under Table A of N.J.A.C. 14:4-8.3 for the previous reporting year, the annual report shall be accompanied by RECs, solar RECs, ACPs and/or SACPs in sufficient quantities to make up the shortfall.

(c) The annual report shall contain the following basic information for the preceding reporting year:

1. The total number of megawatt hours of electricity sold to retail customers in New Jersey;
2. The total number of megawatt hours of electricity sold to retail customers in New Jersey that qualify as class I renewable energy under N.J.A.C. 14:4-8.4;
3. The percentage of the supplier/provider's total New Jersey retail sales that the amount set forth under (c)2 above represents;
4. The total number of megawatt hours of electricity sold to retail customers in New Jersey that qualify as class II renewable energy under N.J.A.C. 14:4-8.5;

5. The percentage of the supplier/provider's total New Jersey retail sales that the amount set forth under (c)4 above represents;
 6. The total number of megawatt hours of electricity sold to retail customers in New Jersey that qualify as solar electric generation under N.J.A.C. 14:4-8.4;
 7. The percentage of the supplier/provider's total retail sales that the amount in (b)6 above represents;
 8. The total amount of solar electric generation, class I renewable energy, and class II renewable energy represented by RECs submitted with the annual report;
 9. The total number of ACPs and/or SACP's submitted with the annual report; and
 10. A summary demonstrating how compliance with the requirements in Table A have been achieved.
- (d) The documentation required under (c) above shall include the following:
1. Identification of each generating unit, including its location, fuel and technology type, and any unique State and/or Federal facility or plant identification number;
 2. An affidavit from the operator of each generating unit that the specified amount of megawatt hours from each renewable energy source was generated by and/or sold to the supplier/provider and that the supplier/provider has sole and exclusive title to the renewable energy and has not been used to meet the RPS energy requirements in any other state or jurisdiction;
 3. An affidavit from the supplier/provider that the specified megawatt hours were delivered into the PJM region and complied with PJM Interconnection energy delivery rules; and
 4. For each solar REC submitted, certification of compliance with the requirement at N.J.A.C. 14:4-8.4(b) that the REC has not been used to satisfy another state's renewable energy requirements. The certification shall be in a form required by the Board, and available on the BPU website at www.bpu.state.nj.us.
- (e) Once the GATS system is operational, the documentation required under (c) above shall include an accounting issued by PJM Interconnection that shows the number of RECs purchased and/or held by the supplier/provider.
- (f) Failure of a supplier/provider to demonstrate compliance with this subchapter in accordance with this section, within the deadlines set forth in this section, shall subject the supplier/provider to penalties under N.J.A.C. 14:4-8.12.
- (g) Each supplier/provider shall keep all records pertaining to the requirements in this subchapter for a period of five years, including data on megawatt-hours resulting from owned generation, contracts, purchases from the wholesale market, and purchases of RECs. Each supplier/provider shall make all pertinent records available for review upon request by the Board or its designee.
- (h) Upon the implementation of the GATS system, the Board may modify the reporting requirements in this section as necessary to facilitate implementation of the GATS system. Any such modification shall be accomplished through a Board order or by rulemaking.

- (i) Each supplier/provider shall file a report by September 1, 2004, demonstrating both of the following:
 - 1. Compliance, for calendar year 2003, with the applicable requirements of the previously effective interim renewable portfolio standards; and
 - 2. Compliance, for the period from January 1, 2004 through May 31, 2004, with the percentage requirements at N.J.A.C. 14:4-8.3(h).
- (j) For purposes of demonstrating compliance for calendar year 2003, the report required under (i) above shall replace the annual report that was due on March 1, 2004 under the previously effective interim renewable portfolio standards.

14:4-8.12 Penalties

- (a) Failure to comply with any provision of this subchapter shall subject the violator to the following penalties in accordance with the Board's regulatory and statutory authority:
 - 1. Suspension or revocation of the electric power supplier's license;
 - 2. Financial penalties;
 - 3. Disallowance of recovery of costs in rates; and
 - 4. Prohibition on accepting new customers.
- (b) In determining the appropriate sanction, the Board shall consider the following criteria and any other factors deemed appropriate and material to the electric power supplier's or basic generation service provider's failure to comply:
 - 1. The good faith efforts, if any, of the entity charged in attempting to achieve compliance;
 - 2. The gravity of the violation or failure to comply with the requirements in this subchapter;
 - 3. The number of past violations by the entity charged regarding these standards and other standards adopted by the Board; and
 - 4. The appropriateness of the sanction or fine to the size of the company charged.